

EXHIBIT 29

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

ULTIMA SERVICES CORPORATION,

Plaintiff,

-vs-

Case No. 2:2020-cv-00041

U.S. DEPARTMENT OF AGRICULTURE, et al.,

Defendants.

VIDEOCONFERENCED DEPOSITION OF HOWARD STOVER

Thursday, May 5, 2022

10:02 a.m.

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REPORTED BY: KARINA L. JENNINGS

Videoconferenced deposition of HOWARD STOVER, taken pursuant to Notice before Karina L. Jennings, Court Reporter, and Notary Public for the Commonwealth of Virginia.

A P P E A R A N C E S

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1 someone else's workload.

2 Q So you don't know one way or the other
3 whether there was a task order issued to the State of
4 Washington -- or sorry --

5 A Yeah, I --

6 MS. GRAY: Object to form. Asked and
7 answered.

8 BY MR. ROSMAN:

9 Q Well, let me just try it again. There
10 was a lot of talking. You don't know one way or the
11 other whether there was a task order issued under the
12 IDIQ for services performed in the State of
13 Washington?

14 A I -- I don't -- it was not assigned to
15 me, so I don't know -- I don't know what happened in
16 the State of Washington. I don't remember doing a
17 task order for the State of Washington.

18 Q So going to ask you some questions about
19 the 8(a) program now. Prior to the IDIQs being
20 issued, did you use the 8(a) program to provide any
21 administrative services to the NRCS?

22 A I -- yes, I did. I did. I did.

23 Q For what states?

24 A Okay. There you are. Now I recall I
25 think -- it was right, it was -- I think it was

1 Washington. They -- instead of doing -- and I
2 don't -- I don't recall the reason why, but it seems
3 like that there was some sort of emergency, and it
4 was -- I think it was before the IDIQ -- and it may
5 not have been -- it may have been after the IDIQ --
6 but I know there was an emergency, because it was the
7 first time I used the 8(a) program, and they said
8 that they needed the contract in place in like 48
9 hours. I mean, it was really, really quick. And I
10 don't know what caused the emergency, I don't know
11 whether they had said that they were no longer using
12 Ultima, or that Ultima had reached their ceiling -- I
13 don't remember the reason. I just remember it was
14 emergency. And I called the 8(a) -- excuse me -- I
15 called the Small Business Administration in the State
16 of Washington, and I said, I would like to e-mail you
17 a solicitation for requirement that I have, and I
18 really need to get something in place in the next 48
19 hours, and that the new contractor would have to hire
20 the current employees. So -- but I just don't
21 remember what the emergency was, or rather -- whether
22 the contract had been Ultima before -- I don't
23 remember. I just know that I was given the task to
24 get something on the -- a viable contract in place
25 within like 48 hours or so. So I called the Small

1 Business Administration, and they arranged for a
2 Native American concern to look at the solicitation.
3 They provided me some numbers. Their numbers were
4 fairly close to the government estimate, and we
5 awarded that contract, a sole source under the 8(a)
6 program, to this Native American firm. But I -- I
7 just can't remember whether it was before the IDIQ or
8 after the IDIQ. I'm thinking it was before, and I
9 don't remember what the emergency was, why that we
10 had to do something right away, but I do remember
11 that it was -- at the time it seemed like that's the
12 only thing in the world was important was to get that
13 contract in place.

14 Q So would you say that the time crunch
15 was a primary motivation for you using an 8(a) sole
16 source contract?

17 A Yes, no other way I could have did it.

18 Q Can you recall any other instance prior
19 to the IDIQs -- and I know you said you're not sure
20 this one was prior to the IDIQs -- but can you recall
21 any other instance which may have been before the
22 IDIQs in which you utilized the 8(a) program to
23 provide administrative services to an NRCS office?

24 A No, because we had the -- we had the
25 IDIQ with Ultima, and it was -- it was fairly simple

1 would have been able to do a contract, because
2 California would have used it all. So for Colorado
3 or Wyoming or -- and all the other states in Region 4
4 to have a contracting vehicle to do contracts, we
5 couldn't include California in the -- in the IDIQ
6 contract.

7 MR. ROSMAN: Okay. Michelle, if you could
8 put CA4 and CA5 into Exhibit Share now, I'd
9 appreciate it.

10 BY MR. ROSMAN:

11 Q Mr. Stover, so I take it -- my question
12 was, was that your understanding. I take it that
13 that was your understanding -- what was presented in
14 Exhibit 3 was your understanding of why the 8(a)
15 program was used --

16 A Yeah, it jarred my memory, yes. I
17 didn't know why, but when I read that I remembered,
18 yeah, that there was a problem with California
19 because it was so big.

20 Q Okay. And did you have the authority to
21 keep California out of the IDIQ contract?

22 A Absolutely. The IDIQ contract --
23 there's nothing in there that prohibited us from
24 using another contractor.

25 Q So let me be clear about that. Was

1 there anything in the IDIQ contract that would have
2 prohibited you from say competing a task order under
3 the IDIQ contract?

4 A Well, that's a whole different thing.
5 If you're talking about a task order, the answer
6 would be all task orders had to be -- had to be done
7 against the IDIQ contract. But for example, there
8 was a state that came up, for whatever reason you
9 decided not to use the IDIQ contract, you were
10 perfectly within your rights to do so. There was
11 no -- there was no exclusive deal with Ultima to do
12 all the administrative contracts. The IDIQ was there
13 as a convenience for contracting officers who wanted
14 to use it. We didn't have to use it. We could use
15 other contractors if we so desired.

16 Q Okay. Good. So let me just make sure
17 I'm clear on this. So if you wanted to compete a
18 contract in Wyoming for administrative services to
19 the NRCS as a total small business set aside
20 contract, that was within your authority; is that
21 right?

22 A Yes.

23 Q Okay. Great. Okay. So let's go back
24 to our exhibits. And let's take a look at Exhibit 5.
25 I'm going to ask you if you've ever seen this

1 Let's see. Yeah. This is -- can you identify this
2 document, Exhibit 8?

3 A It looks like a -- it looks like it's
4 a -- okay. I -- well, I'm not sure, so I'm not going
5 to say it, but anyway, this looks like it's a
6 follow-on contract to the POWTEC contract.

7 Q Okay. It's a follow-on contract. Could
8 you just tell us what a follow-on contract is?

9 A Okay. For whatever reason, and I'm not
10 sure of why POWTEC could not continue with the
11 contract, and now that I see this document, I'm
12 thinking the reason POWTEC could not continue with
13 the contract is because they graduated from the 8(a)
14 program, and they were -- and when the first bridge
15 contract was awarded to them, they were on the --
16 they only had a year left, which is probably why we
17 only did it for a year, and -- because that's as long
18 as we could do it until they graduated. And Tetna
19 [sic] came in and took over the contract after them,
20 also under the 8(a) program, because POWTEC, due
21 to -- you can only be an 8(a) program for so long and
22 then you graduate, and you have to compete for
23 contracts like everyone else. I think that was the
24 case with POWTEC, they graduated.

25 Q Right. My question though is what is a

1 follow-on contract?

2 A Well, I mean, when POWTEC left the
3 contract, we still had a requirement, so we still
4 needed to find a contractor to do it.

5 Q So a follow-on contract is a contract
6 that basically --

7 A Well, let -- let me -- let me be a
8 little clearer. I called it a follow-on contract,
9 but basically that's not a technical name. This
10 contract was done because POWTEC was unable to
11 continue to do the contract. We needed a new
12 contractor. So can you call it a new requirement,
13 well, it's new in as far as we didn't have anyone to
14 do the contract; we had to find someone to do the
15 contract because POWTEC couldn't continue to do it.

16 Q Okay. Isn't a follow-on contract a
17 contract that meets the same requirements of an
18 earlier contract?

19 A Well, I -- I probably would -- I
20 probably would challenge anyone to find, you know,
21 that term about what a follow-on contract -- you hear
22 people use it all the time in different -- different
23 contexts, but I don't think that you'll find
24 follow-on contract in the farm.

25 Q Okay. Isn't it the case that the

1 contract had to stay in the 8(a) program unless the
2 SBA released the requirement from the 8(a) program?

3 A Yeah, that's -- that's true, yeah. The
4 Small Business Administration has to release it, yes.

5 Q And that's why it was given to another
6 8(a) contractor, right?

7 MS. GRAY: Object to form.

8 THE WITNESS: Yes. That's -- I would
9 assume that's -- I'm not sure of exactly what
10 happened, but I do know that this contractor was an
11 8(a) contractor.

12 BY MR. ROSMAN:

13 Q Okay. Let's take a look at Exhibit 9.
14 It may help us here. So is this a document you've
15 seen before, Exhibit 9?

16 A Yes.

17 Q Okay. This is -- did you draft this
18 yourself?

19 A I don't recall. A lot of times these
20 documents were put together by a team.

21 Q Okay. Just take a look and read to
22 yourself the paragraph under B-1, Sources, on the
23 first page.

24 A Yeah, yeah, just like I thought, that
25 the POWTEC could not continue with the service

1 contract, without it counting against the IDIQ
2 contract?

3 A No, because the -- because the Small
4 Business Administration wouldn't have allowed it.

5 Q Okay. Let me -- I'm probably being
6 unclear as to the time frame. Let's go back a year
7 when you -- when the contract was awarded to POWTEC.

8 A Yes.

9 Q Could you have awarded -- could you have
10 tried to meet the requirements for a total small
11 business set aside and not use the 8(a) contract?

12 A Yes, sure.

13 Q And if you had done that, would it have
14 counted against the IDIQ contract or would it just be
15 a separate stand alone contract?

16 A It would have been separate.

17 Q And did you give consideration to doing
18 it that way?

19 A I don't remember.

20 Q But a year later, I think, if I
21 understood your testimony, you couldn't do that
22 because the SBA wouldn't allow it?

23 A Yes, that's correct.

24 Q Now, could you have asked the SBA to
25 release the requirement from the 8(a) program?

1 A Sure. I mean, of course you can ask,
2 but their mission is to give awards to disadvantageded
3 business. Why would they let this requirement just
4 walk away.

5 Q Have you ever tried to create a new
6 requirement in order to take a requirement outside of
7 the 8(a) program?

8 A No, I haven't.

9 MR. ROSMAN: All right. Michelle, if you
10 could put CO1 into Exhibit Share.

11 BY MR. ROSMAN:

12 Q I'm going to move to Colorado, Mr.
13 Stover. Do you recall if Ultima was performing task
14 orders under the IDIQ for the State of Colorado?

15 A Yes, they were.

16 Q Do you recall approximately when those
17 task orders were issued?

18 A I would assume that it was sometime
19 around the same time of the awarding of the IDIQ
20 contract.

21 Q Okay. Let's -- let's try to take a look
22 at Exhibit 10. It's not very clear, so -- having a
23 little trouble making it larger.

24 A Okay. I see it.

25 Q Can you see it?

1 A It's a request to the Small Business
2 Administration to bring on -- time systems on under
3 the 8(a) program.

4 Q Okay. And can you tell me -- was this
5 your decision?

6 A To do the 8(a) contract, yes, it was my
7 decision.

8 Q Why did you decide to use the 8(a)
9 program to fulfill this particular requirement at
10 this time?

11 A I don't -- I don't remember the exact
12 reason, what my thinking was. I do know that when
13 the Ultima contract was canceled, a lot of these
14 contracts were in danger of having a service break,
15 and more importantly, of losing the employees. So
16 the contractor that I brought on board would take
17 over the -- would take over the employees, so the
18 employees would still continue to work, and the only
19 thing would change was the management. Why I did a
20 8(a) program, I imagine it had to do with -- well,
21 let me not guess. Let me just say that I don't know
22 why I did the 8(a) contract, but I did do one.

23 Q Would you say that time constraints were
24 frequently a motivation for utilizing 8(a) sole
25 source contracts?

1 A Yeah, pretty much, yes.

2 Q Well, just to close the loop here, let's
3 go out and take a look at Exhibit 12. And can you
4 just identify this document for us?

5 A Yes, this is the contract for the 8(a)
6 company, Time Systems, in Colorado.

7 Q Okay. Very good. Thank you.

8 MR. ROSMAN: Michelle, if you could put HI1
9 into Exhibit Share, that would be great.

10 BY MR. ROSMAN:

11 Q While she's doing that, Mr. Stover, did
12 you give any thought -- let me rephrase the question.
13 Do you recall whether you considered the possibility
14 of trying to meet the requirements through a total
15 small business set aside in Colorado?

16 A I don't remember what my thought process
17 was.

18 Q Do you know someone named Randy Randall?

19 A Yes, I know Mr. Randall.

20 Q Did you ever have any conversations with
21 Mr. Randall about the requirement in Colorado for
22 administrative services?

23 A Yes, Mr. Randall very much wanted to
24 keep the Ultima contract in place. Him and the
25 Colorado state conservationist went to Mr. Astor

CERTIFICATE OF COURT REPORTER

I, Karina L. Jennings, do hereby certify
that I recorded verbatim the proceedings in the
aforementioned case on May 5, 2022.

I further certify that the foregoing pages,
numbering 1 through 116 inclusive, constitute a true,
accurate, and complete transcript of said
proceedings.

Given under my hand this 24th day of May,
2022.

A handwritten signature in black ink, appearing to read "Karina L. Jennings", is written over a horizontal line.

Karina L. Jennings, Court Reporter